

JUN 21 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTONI DAMIAN PERALTA,

Defendant - Appellant.

No. 09-30075

D.C. No. 3:08-CR-00084-RRB

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Ralph R. Beistline, Chief District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Antoni Damian Peralta appeals from the 57-month sentence imposed following his guilty-plea conviction for being a felon in possession of firearm and

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

ammunition, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). We dismiss based on the valid appeal waiver.

Peralta contends the district court did not properly weigh the 18 U.S.C. § 3553 sentencing factors. We decline to reach this contention in light of Peralta's appeal waiver of his conviction and sentence. *See United States v. Bibler*, 495 F.3d 621, 623-24 (9th Cir. 2007).

Peralta argues that he did not knowingly and voluntarily waive his right to appeal because his trial counsel rendered ineffective assistance by, among other things, failing to accurately anticipate the applicable range under the Guidelines, and by failing to discuss a fingerprint report during sentencing. However, the record in this case is not sufficiently developed to evaluate Peralta's ineffective assistance of counsel claim on direct appeal. *See United States v. Jeronimo*, 398 F.3d 1149, 1154-56 (9th Cir. 2005).

DISMISSED.